IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 401 OF 2004

IN

SUMMARY SUIT NO. 984 OF 2004

M/s.Acryplast Pvt.Ltd. .. Plaintiff

versus

M/s.GMS Technologies Ltd. .. Defendant

...

Mr.S.P. Kanga for the plaintiff.

Mr.Gopal Poojary for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 17th January 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The suit is filed by the plaintiff for recovery of price of the goods sold, supplied and delivered and interest. In the affidavit in reply, defendant has raised interalia two defences. One

regarding the liability to pay interest and secondly has claimed a sum of Rs.75,000/- by way of penalty. The learned counsel on instructions gives up the claim of interest prior to the date of the suit. The learned counsel for the plaintiff also agrees for a deduction of Rs.75,000/- towards the penalty as claimed by the defendant and gives up the claim of Rs.75,000/-. In view of this concession made by the plaintiff through its counsel, the said two defences do not survive.

3. The other contention raised by the defendant is that this Court has no jurisdiction to entertain and try the suit because the registered office of the defendant is situated outside Mumbai. The order was placed at Mumbai. The goods were supplied at Mumbai. Hence, whole of the cause of action has arisen at Mumbai and therefore, this Court would have jurisdiction to entertain and try the suit. The mere fact that the registered office of the defendant is situated outside Mumbai would not take away the jurisdiction of this Court in view of the fact that the entire cause of action has arisen at Mumbai and the defendant has a place of business at Mumbai.

4. In paragraph no.3 of the affidavit in reply,

the defendant has stated as follows :-

> "I say that the Defendant is ready and willing to pay the amount of Rs.16,83,025.28 to the Plaintiff on receipt of the warranty from the Principal for three years for the goods supplied by the Plaintiff to the Defendant."

Thus, there is a clear admission on the part of the defendant to pay a sum of Rs.16,83,025.28. The condition of warranty is not contained in the original contract. As such, the defendant is not entitled to put any condition for payment of the money due.

5. Summons for Judgement is partly made absolute and the suit of the plaitiff is partly decreed as follows :

6. The defendant shall pay to the plaintiff a sum of Rs.16,83,025.28 together with interest at 9% p.a. from the date of the suit till payment and all costs of the suit.

D.G. KARNIK, J